

BOARD OF APPEALS CASE NO. 4897	*	BEFORE THE
APPLICANT: Estate of Rose Ella Osborne	*	ZONING HEARING EXAMINER
REQUEST: Variance to permit existing agricultural building located within the required 50 foot setback; 1914 Rock Spring Road, Forest Hill	*	OF HARFORD COUNTY
	*	Hearing Advertised
	*	Aegis: 3/10/99 & 3/17/99
HEARING DATE: April 28, 1999	*	Record: 3/12/99 & 3/19/99

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant is the Estate of Rose Ella Osborne. The Applicant is requesting a variance to Section 267-39(B), Table XI, of the Harford County Code, to permit an existing agricultural building within the required 50 foot setback from an adjacent residential lot in a B2 District.

The subject parcel is located at 1914 Rock Spring Road in the Third Election District. The parcel is identified as Parcel No. 170, in Grid 2-E, on Tax Map 40. The parcel contains 5.46 acres, more or less, all of which is zoned B2.

Mr. Torrence Pierce, a professional engineer with Frederick Ward Associates, Inc., testified as expert in the field of engineering and site planning. Mr. Pierce said that the subject property is improved by the original Osborne home, a large warehouse building situated to the rear of the Osborne home, and a large metal agricultural storage building which is the subject of this request. He explained that the agricultural building was previously located on the back of the Osborne Farm and was used by Mr. Osborne for his Harford Sod business. When he sold the property for residential development, it was Mr. Osborne's responsibility to move the large metal building.

Mr. Pierce said that Mr. Osborne retained the services of a contractor to physically dismantle and reconstruct the building in its current location. Mr. Osborne believed that, since the building was an agricultural structure which was merely being relocated, he would not need a permit. Once the building was reconstructed at its current location, it was made clear to Mr. Osborne by Harford County that due to a B.O.C.A. regulation, a building permit was necessary. Mr. Pierce went on to testify that Harford County refused to issue the permit since the structure had been reconstructed too close to the adjacent residential property line.

Mr. Pierce testified that at the time the metal building was originally constructed, Mr.

Case No. 4897 - Estate of Rose Ella Osborne

Osborne was the owner of the adjacent property, which was zoned R2. The R2 portion of the Osborne property was still under active cultivation and was in active farm use. Mr. Pierce testified that the adjacent R2 property owners support the variance request and that the Applicant has agreed to construct a landscape berm between the R2 and B2 zoned property. Mr. Pierce testified that, in his opinion, the granting of the variance will not be substantially detrimental to adjacent properties and will not materially impair the purpose of the Code or the public interest. He further testified that the literal enforcement of the side yard setback would result in practical difficulty and unreasonable hardship in that if the variance request is denied, the building would have to be torn down and relocated to comply with the 50 foot side yard setback.

No protestants appeared in opposition to the Applicant's request and the Staff Report of the Department of Planning and Zoning provided:

"This Board of Appeals case was filed to bring this agricultural building into compliance with the Harford County Code. The residentially zoned property to the south, adjacent to Rock Spring Road, is being actively farmed at this time."

CONCLUSION:

The Applicant is requesting a variance to Section 267-39(B), Table XI, of the Harford County Code, to permit an existing agricultural building within the required 50 foot setback from an adjacent residential lot. The evidence introduced by the Applicant's expert witness demonstrates that the agricultural building previously used in the Harford Sod business was relocated to its current position on the property by Mr. Osborne, who mistakenly believed that he did not need a building permit since the building was an agricultural structure. The testimony indicates that it is impossible to comply with the 50 foot setback without dismantling the building.

Case No. 4897 - Estate of Rose Ella Osborne

In the case of McLean v. Soley, 270 Md. 208, 310 A.2d (1973), the standard for granting a variance was set forth. In the McLean case, the court stated:

“...the standard for granting the variance is whether the strict compliance with the zoning ordinance regulations would result in practical difficulty or unreasonable hardship”.

In the case of Carney v. City of Baltimore, 201 Md. 130 (1952), the court stated that “practical difficulties or unnecessary hardship” means difficulties or hardships which are peculiar to the situation of the Applicant for the permit.

Strict compliance with the side yard setback would make it impossible to utilize the current building for the permitted B2 purpose, which is storage. In addition, if it is required that the building be brought into compliance with the Zoning Code, conformance would be unnecessarily burdensome, inasmuch as the building would have to be torn down and relocated. Clearly, when the test for a variance as set forth in McLean v. Soley is applied, one can conclude that strict compliance with the side yard setback variance would result in practical difficulty and unreasonable hardship, given that the building would have to be torn down if the variance is denied.

The expert testimony demonstrated that granting the variance would not be substantially detrimental to adjacent properties, will not materially impair the purpose of the Code or the public interest.

Therefore, it is the recommendation of the Hearing Examiner that the requested variance to allow the building to remain 15 feet from the adjacent residential line is hereby recommended, subject to the following conditions:

1. The subject structure shall be used as an agricultural storage building only.
2. The Applicant shall obtain all necessary inspections for the building.
3. Any change in use requires a site plan approval from the Development Advisory Committee.

Date JUNE 22, 1999

L. A. Hinderhofer
Zoning Hearing Examiner